IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2142 OF 2005

IN

SUIT NO.2531 OF 2004

Mrs.Sushilarani Baburao Patel. ...Plaintiff

vs.

1.Chandru J.Punjabee & others. ...Defendants

Mr.A.A.Kumbhakoni with N.M.Gunjalkar and A.R.Bapat, for Plaintiff.

Mr.Bharat Chaudhary i/b. Divya Shah & Associates, for Defendants 1 to 11.

CORAM: D.K.DESHMUKH,J.

DATED: 16th April,2007

P.C.:-

1. This is a notice of motion taken out by the

plaintiff. Heard the learned Counsel appearing for plaintiff and the learned Counsel appearing for respondent nos. 1 to 11. So far as the prayer clause (a) is concerned, even according to the defendant nos. 1 to 11 they have taken the undertaking-cum-indemnity from the flat purchasers. They are also having in their possession the originals but according to them the plaintiff is supplied with the copies because the plaintiff has only asked for copies. It is clear from the agreement that the undertaking cum indemnity was to be obtained for the benefits of the plaintiff, therefore, the plaintiff is entitled to the originals of undertaking cum indemnity. The notice of motion is therefore, granted in terms of prayer clause (a).

2. Defendant nos. 1 to 11 are directed to hand over to the plaintiff's Advocate the originals of the undertaking cum indemnity obtained by them from the flat purchasers within a period of two weeks from today.

3. The learned Counsel appearing for plaintiff

submits that as per the agreement between the parties which is at Exhibit G to the plaint dated 8.3.2002 the defendant nos. 1 to 11, as per clause (2), are agreed to retain the existing bungalow exclusively for the use of the plaintiff together with the open area. Which open area agreed to be retained for being exclusive use of the plaintiff is defined by clause 6(a) and (b) i.e. admeasuring 1220 sq.ft at the ground level on West side of the existing bungalow, a paved garden with pathway on the East side of the plot admeasuring 2300 sq.ft. with a gate fixed near the second column on East side of the plot, as also the parking area admeasuring 350 sq.ft on the East side of the bungalow. The learned Counsel appearing for defendant nos. 1 to 11 submits that area admeasuring 648 sq. meters of recreational ground is to be retained by the defendant nos. 1 to 11 pursuant to the order passed by this Court as also the Supreme Court and according to him therefore, the plaintiff is not entitled to open area which is agreed to between the plaintiff and defendant nos. 1 to 11. Admittedly, the order on which the defendant nos. 1 to 11 relied on, has been passed in the

litigation to which the plaintiff was not a party. The recreational ground is directed to be kept possibly for the benefits of the flat purchasers. While keeping ground open for the benefits of flat purchasers, the entitlement of the plaintiff under the agreement cannot be reduced. In any case, if the entitlement of the plaintiff is to be reduced on the basis of some orders passed by the Court then those orders will not bind the plaintiff because the plaintiff was not a party to that litigation. I am also informed that the original suit in which these orders were passed has also been withdrawn.

4. In this view of the matter therefore, in my opinion, the plaintiff is entitled to an interim order directing the defendant nos. 1 to 11 to make available to the plaintiff open area as described in paragraph 6(a) and (b) of the agreement at Exhibit G. It is accordingly so ordered. The plaintiff shall be at liberty to put up a fencing to preserve the open area as per clause 6(a) and (b) of the agreement, for her exclusive use. The notice of motion is disposed of.

Considering the age of the plaintiff, hearing of the suit is expedited.